

Thomas Ward has referred this Decision Notice to the Upper Tribunal where the parties will present their respective cases. Any findings in this Decision Notice are therefore provisional and reflect the Authority's belief as to what occurred and how it considers the behaviour of Thomas Ward should be characterised. The Tribunal will determine what (if any) is the appropriate action for the FCA to take, and will remit the matter to the FCA with such directions as the Tribunal considers appropriate to give effect to its determination. The Tribunal's decision will be made public on its website. No allegation of wrongdoing is made against Hennessy Jones Limited, Mark Stephen, James King or City Administration Limited in this Decision Notice.



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DECISION NOTICE

To: Thomas Henry Ward

Date Of

Birth: October 1961

Date: 6 December 2018

1. ACTION

1.1. For the reasons given in this Notice, the Authority has decided to:

- (1) impose on Mr Thomas Ward a financial penalty of £416,558 pursuant to section 63A(1) of the Act; and
- (2) make an order pursuant to section 56 of the Act prohibiting Mr Ward from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2. SUMMARY OF REASONS

2.1. Pensions are a traditional way of saving and investing money in a tax-efficient way for retirement. The value of someone's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. It is of paramount importance that consumers of financial services can have confidence that persons exerting significant influence at authorised firms are accountable to the regulator and have been approved as fit and proper.

- 2.2. The Authority considers that between 3 July 2014 and 1 February 2016 (the "Relevant Period"), Mr Ward performed the role of a director of Financial Page Ltd ("FPL"), an authorised firm. He did so without being approved by the Authority to perform the CF1 (Director) controlled function (the "Director Function"). Mr Ward knew, or could reasonably be expected to have known, that he was performing a role for which he required approval, and knew that if FPL applied for his approval, the Authority was unlikely to grant the application. By acting as a director of FPL in these circumstances, Mr Ward acted without integrity. Further, Mr Ward acted without integrity whilst performing this role.
- 2.3. FPL is a small firm that, during the Relevant Period, was authorised by the Authority with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging (bringing about) deals in investments. Andrew Page was the sole appointed director and approved person at FPL during the Relevant Period, with approval to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). Mr Ward was not an appointed director of FPL or an approved person. He nevertheless played a key role in directing and managing FPL during the Relevant Period.
- 2.4. Between around July 2014 and July 2015, FPL used the Pension Review and Advice Process. This process was based on a pension switching advice model, the development of which was initiated and influenced by a third party, HJL. The Pension Review and Advice Process involved third party service providers (including HJL) performing functions on FPL's behalf (the Outsourced Functions), with little meaningful oversight by FPL. The process was structured to result in customers who met certain pre-set criteria being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Loan Notes and, from November 2014, the Bond). HJL had a significant financial interest in the Loan Notes, which was not disclosed to customers. Mr Ward introduced Mr Page to HJL and played a critical role in FPL's adoption and use of the Pension Review and Advice Process. In agreeing that FPL should adopt the Pension Review and Advice Process, Mr Ward and Mr Page were motivated by the prospect of receiving significant personal financial benefit.
- 2.5. During the Relevant Period, Mr Ward was a de facto director of FPL. A de facto director is an individual who acts as a director without having been appointed to that position validly, or at all. The Authority considers that Mr Ward acted as a director for the following reasons:

- (1) Mr Ward was central to FPL's adoption and use of the Pension Review and Advice Process.
- (2) Mr Ward directed Mr Page to carry out tasks or refrain from performing certain actions, and Mr Page followed these directions. Conversely, Mr Page rarely provided Mr Ward with instructions or commented on his work. He also did not raise objections to any actions that Mr Ward took, or directed that third parties take, during the Relevant Period.
- (3) Mr Ward acted with a degree of autonomy that could only be attributed to a director, and he and Mr Page kept one another updated.
- (4) Mr Ward controlled FPL's professional working relationships with key third parties. He acted as the FPL representative through whom both HJL and the SIPP Provider communicated with FPL.
- (5) Mr Ward assumed responsibility for a number of key initiatives during the Relevant Period, which he drove forward with little or no involvement from Mr Page. He instructed third parties to act on his instructions and signed a document purportedly in his capacity as a director/authorised signatory of FPL. He also led negotiations with regard to expanding FPL's business.
- (6) Mr Ward performed a number of important functions for FPL, including making payments from its bank account.
- (7) Mr Ward was remunerated on a similar basis to Mr Page, who referred to Mr Ward as his business partner during an interview with the Authority.
- (8) Mr Ward took steps to control and influence the content and flow of information that FPL disclosed to the Authority. He encouraged Mr Page to withhold important information from the Authority and deliberately drafted communications, and instructed Mr Page to provide communications, to the Authority that were false and/or misleading.

2.6. The Authority considers that Mr Ward knew, or could reasonably be expected to have known, that he was performing a role for which he required approval, and chose not to seek such approval from the Authority. In particular, Mr Ward:

- (1) has over 30 years' experience in the UK financial services sector, during which time he was an approved person for nearly nine years, performing management or director roles at three regulated firms, including a role in compliance;

- (2) worked for the SFA, a predecessor body to the Authority, supervising regulated firms;
- (3) confirmed to the Authority in interview that he understands what controlled functions are and the need for approval when performing them; and
- (4) was aware that, if FPL applied for approval for him to perform the Director Function, the Authority would take into account his disciplinary history and criminal record, and that there was therefore a material risk that the Authority would not grant the application.

2.7. The Authority considers Mr Ward's misconduct to be especially serious because, whilst performing the role of a director of FPL, he acted without integrity:

- (1) he had a detailed understanding of the Pension Review and Advice Process and knew that HJL had a material financial interest in the Loan Notes which was not disclosed to customers. However, Mr Ward recklessly closed his mind to the obvious conflict of interest presented by HJL's involvement in the Pension Review and Advice Process and its financial interest in the Loan Notes, and to the risk that unsuitable advice might be given to FPL's customers, and was instrumental in FPL's adoption and use of the Pension Review and Advice Process;
- (2) he disregarded the interests of FPL's customers and showed a willingness to enrich FPL, himself and third parties at their expense;
- (3) he regularly requested approval from HJL for his actions during the Relevant Period. He was also prepared to take instructions from HJL in relation to aspects of FPL's business over which HJL should not have had influence, including in relation to the investment of FPL's customers' pensions. By acting in this way, Mr Ward placed the interests of HJL above the interests of FPL's customers; and
- (4) he took deliberate steps to control and influence the content and flow of information that FPL disclosed to the Authority. He encouraged Mr Page to withhold important information from the Authority and deliberately drafted communications, and instructed Mr Page to provide communications to the Authority, that were false and/or misleading. If the information provided to the Authority had been accurate and not misleading, the Authority would

have intervened in FPL's business earlier and the potential impact upon FPL's customers would have been reduced.

- 2.8. Section 63A(1) of the Act gives the Authority the power to impose a penalty on a person that knowingly performs, or could reasonably be expected to have known that they were performing, a controlled function without approval. For the reasons set out above, the Authority considers that, during the Relevant Period, Mr Ward acted as a de facto director of FPL, that he thereby performed the Director Function, and that he knew, or could reasonably be expected to have known, that he was doing so without approval from the Authority.
- 2.9. The Authority considers that it is appropriate to impose a significant financial penalty on Mr Ward. This will send a clear deterrent message to those who think they can avoid the regulatory consequences of their actions by performing controlled functions without the necessary approval. It also supports the Authority's regulatory objective of securing an appropriate degree of protection for consumers.
- 2.10. The Authority therefore has decided to impose a financial penalty on Mr Ward in the amount of £416,558 pursuant to section 63A(1) of the Act.
- 2.11. Further, the Authority considers that Mr Ward is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Accordingly, the Authority has decided to make a prohibition order pursuant to section 56 of the Act.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice.

"the Act" means the Financial Services and Markets Act 2000

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

the "Bond" means the 10-year bond issued by an unquoted UK company incorporated in November 2014 into which FPL's customers' pensions were invested

"CAL" means City Administration Limited, the third party service provider that performed the Outsourced Functions on behalf of FPL between October 2014 and July 2015

"COBS" means the Conduct of Business Sourcebook, part of the Handbook

"DEPP" means the Authority's Decision Procedure and Penalties manual, part of the Handbook

"Director Function" means the CF1 (Director) controlled function which, in accordance with SUP 10A.6.7R, in respect of a firm that is a body corporate (other than a limited liability partnership), is the function of acting in the capacity of a director (other than a non-executive director) of that firm

"EG" means the Authority's Enforcement Guide

"FPL" means Financial Page Ltd

"FSCS" means the Financial Services Compensation Scheme

the "Handbook" means the Authority's Handbook of rules and guidance

"HJL" means Hennessy Jones Limited, now known as Reditum Capital Limited. FPL signed a contract with HJL on 6 December 2013 for HJL to become an IAR of FPL, and HJL was registered with the Authority as such between 11 September 2014 and 2 July 2015. HJL introduced customers to FPL between July 2014 and July 2015. HJL also performed the Outsourced Functions on behalf of FPL between July 2014 and October 2014

"IAR" means Introducer Appointed Representative

"Loan Notes" means the investments, which involved 10-year loans to funds incorporated in Mauritius and managed by a Mauritian company, into which FPL's customers' pensions were invested

"Mr Page" means Andrew Mark Thomas Page

"Mr Ward" means Thomas Henry Ward

"Outsourced Functions" means the functions outsourced by FPL to the Service Providers under the Pension Review and Advice Process, including the functions described at paragraph 4.3(2) of this Notice (but not including the functions carried out by HJL in its role as introducer)

“Pension Review and Advice Process” means the process described in paragraph 4.3 of this Notice that FPL used between July 2014 and 10 July 2015

“Pension Switch” means the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved

“Pension Transfer” has the meaning given in the Handbook, and includes the movement of funds from an occupational pension scheme to a personal pension scheme (in this case a SIPP)

“Relevant Period” means 3 July 2014 to 1 February 2016

“Service Providers” means collectively HJL and CAL

“SFA” means Securities and Futures Authority

“SIPP” means self-invested personal pension

“SIPP Provider” means the firm providing the SIPP account

“Software” means the automated client management system that was used by the Service Providers during the Pension Review and Advice Process to manage customer information and generate Suitability Reports for customers

“Suitability Report” means the report which a firm must provide to its client under COBS 9.4 which, among other things, must explain why the firm has concluded that a recommended transaction is suitable for the client

“SUP” means the Supervision manual, part of the Handbook

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“Underlying Investments” means the Loan Notes and/or the Bond

“the Warning Notice” means the warning notice given to Mr Ward dated 5 March 2018

4. FACTS AND MATTERS

Relevant Background

- 4.1. FPL is a small firm based in Oswestry, Shropshire. It was directly authorised by the Authority on 3 July 2014 with permission to conduct regulated activities, including advising on investments (excluding Pension Transfers) and arranging

(bringing about) deals in investments. On the same date, Mr Page was approved by the Authority to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer).

4.2. Mr Ward's job title at FPL during the Relevant Period was Head of Operations. However, FPL did not apply to the Authority for his approval and he was not approved to perform any controlled functions on behalf of FPL during the Relevant Period.

4.3. During the Relevant Period, FPL used the Pension Review and Advice Process. This process was based on a pension switching advice model, the development of which was initiated and influenced by HJL. The Pension Review and Advice Process:

(1) involved HJL sourcing leads from lead generation companies and introducing customers to the Firm;

(2) involved the Service Providers being provided with FPL's logo and letterhead and the electronic signature of Mr Page (a qualified financial adviser) so that they could perform functions on FPL's behalf. The Outsourced Functions included:

(a) contacting customers that had been introduced to FPL by HJL;

(b) conducting fact-finds with these customers;

(c) inputting the results of those fact-finds into the Software, an automated client management system designed to produce Suitability Reports;

(d) sending the Suitability Reports to the customers; and

(e) calling the customers to ask whether they wished to proceed in accordance with FPL's advice;

(3) was structured to result in customers who met certain pre-set criteria approved by FPL being advised to switch their pensions to SIPPs investing in high risk, illiquid assets not regulated by the Authority (the Loan Notes and, from November 2014, the Bond). HJL received 5% of the sums invested in the Loan Notes, which was not disclosed to customers; and

- (4) involved little meaningful oversight by FPL of HJL's activities as an introducer and of the Service Providers' performance of the Outsourced Functions. FPL had little contact with customers, had no involvement in generating or issuing Suitability Reports to customers and did not carry out any substantive review of the advice provided to customers, whether before Suitability Reports were sent to customers or at all.
- 4.4. Mr Page and Mr Ward agreed that FPL should adopt the Pension Review and Advice Process in March 2014 and the first recommendations were made to FPL's customers to switch or transfer their pensions under that process in August 2014. HJL performed the Outsourced Functions on behalf of FPL between July 2014 and October 2014, and CAL performed the Outsourced Functions on behalf of FPL between October 2014 and July 2015.
- 4.5. During the Relevant Period, FPL advised 860 customers to switch or transfer their pension funds to SIPPs investing in the Underlying Investments through the Pension Review and Advice Process. This amounted to approximately £31 million of customer funds.
- 4.6. On 16 July 2017 FPL entered liquidation. The FSCS declared FPL in default on 22 March 2017 and is investigating claims made by FPL's customers. As at 17 May 2018, the FSCS had paid over £1.7 million in compensation to FPL customers as a result of loss suffered upon transferring or switching their pensions to the Underlying Investments.

Mr Ward's disciplinary history

- 4.7. Mr Ward was previously a director and an approved person at a large financial services group, where he was employed as Head of Operations. He was dismissed from that role in October 1999 following an internal disciplinary process, the content of which later became the subject of criminal proceedings. In 2001, he was prosecuted, convicted and imprisoned for six counts of obtaining a money transfer by deception.
- 4.8. The SFA initiated an investigation into Mr Ward's conduct and subsequently commenced proceedings to expel Mr Ward from its register. The case was transferred to the Authority following the changes to the regulatory structure brought about by the implementation of the Act. The Authority considered taking action to prohibit Mr Ward on the grounds that his criminal conviction and the surrounding circumstances indicated that he was dishonest and unfit to carry out functions in relation to any regulated activity. However, having considered the

matter, the Authority concluded that Mr Ward was unlikely ever to be granted approved person status in the future (in the event that an application was made for his approval) and therefore that the risk he posed to consumers was low.

- 4.9. On 22 April 2002, the Authority wrote to Mr Ward to inform him that, although it had decided to take no further action, it held on record the documentation relating to the SFA investigation and that, in the event that an application was made for his approval to carry out any activity, those matters would be considered and taken into account.

Mr Ward's role in FPL's adoption and use of the Pension Review and Advice Process

- 4.10. Mr Ward introduced Mr Page to HJL in December 2013 and after that time played a critical role in FPL's adoption and use of the Pension Review and Advice Process.
- 4.11. On 8 March 2014, Mr Ward informed Mr Page in an email that HJL had a pension switching advice model. He explained that, were FPL to apply this model, he would provide Mr Page with packaged customer files and all supporting documentation and that all Mr Page would then be required to do was to put FPL's name to the advice that would be provided to customers. The customer files and supporting documentation were to be provided to Mr Ward by HJL. Mr Ward told Mr Page that the business could generate '*ridiculous*' amounts of income and Mr Page responded that this had '*just made my day*'.
- 4.12. Mr Page and Mr Ward subsequently agreed that FPL should adopt this pension switching advice model (as the Pension Review and Advice Process). In order to do so, FPL needed to be directly authorised by the Authority and so Mr Page submitted an application for FPL's authorisation, which was received by the Authority on 9 April 2014. FPL started to use the Pension Review and Advice Process once its application was approved by the Authority, in July 2014.
- 4.13. Once Mr Page and Mr Ward had agreed that FPL should adopt the Pension Review and Advice Process, Mr Ward was heavily involved in the preparations undertaken by FPL to start to use the process. For example, he met the designer of the Software, informed the SIPP Provider that FPL would commence submission of advised pension switching cases imminently, reviewed documents to be used in the process and acted as the conduit between Mr Page and HJL. Once FPL had adopted the Pension Review and Advice Process, Mr Ward had an important role in FPL's use of the process, in particular through his control and management of FPL's interactions with HJL and the SIPP Provider (see paragraph 4.16 below).

4.14. FPL received from the SIPP Provider an advice fee of 3% of a customer's pension assets when a Pension Switch or Pension Transfer to the SIPP was completed. FPL would then pay the relevant Service Provider a proportion of the fees for its role in the Pension Review and Advice Process. For any customers who opted to have ongoing servicing, FPL would also receive an annual fee of up to 0.5% of the customer's pension assets paid by the SIPP Provider from the customer's pension assets. Between September 2014 and January 2016, FPL received £1,154,692 in advice/ongoing servicing fees. FPL paid over £52,000 of its fees to HJL and over £679,000 to CAL for their roles in the Pension Review and Advice Process.

Mr Ward's role at FPL

4.15. In interview with the Authority, Mr Ward gave several different descriptions of his role at FPL, stating that he was a consultant, secretary, administrator or junior clerk. However, the Authority considers that Mr Ward in fact exerted significant influence and control over FPL and assumed responsibility for a number of the key aspects of FPL's business. He was also remunerated on a similar basis to Mr Page, the only formally appointed director, who referred to Mr Ward as his business partner during an interview with the Authority. As such the Authority considers that Mr Ward was a de facto director of FPL.

4.16. Mr Ward controlled and managed FPL's interactions with HJL and the SIPP Provider. The matters described below demonstrate the importance of the role he performed:

- (1) communications between FPL and key individuals at HJL were conducted almost exclusively by Mr Ward (and in many instances Mr Page was not copied into correspondence);
- (2) the SIPP Provider communicated primarily with Mr Ward and was accustomed to acting on his instructions. Mr Ward led negotiations with the SIPP Provider in relation to a number of matters, including:
 - a) the novation of customers to FPL from another financial adviser that had adopted the same pension switching advice model; he also drafted the novation letters and offered to guide the SIPP Provider through the process;
 - b) the frequency and format of servicing fees charged to customers; and

- c) the reinvestment of customers' investment returns in the Loan Notes;
 - (3) Mr Ward led negotiations with the SIPP Provider and HJL about proposals to switch customers' investments between different Underlying Investments;
 - (4) on 10 April 2015, Mr Ward agreed with the SIPP Provider that it would act on his instructions regarding the investment of customers' funds. He later personally gave the instruction to transfer customers' funds into the Bond; and
 - (5) Mr Ward demanded that any issues the SIPP Provider identified relating to FPL's customers should be directed to him, and the SIPP Provider did in fact contact Mr Ward, rather than Mr Page, when issues arose.
- 4.17. Mr Ward assumed responsibility for a number of FPL's key business initiatives during the Relevant Period and performed a number of important functions. In particular, he:
- (1) made payments from FPL's bank account on at least two occasions;
 - (2) led discussions with other SIPP providers with a view to using their services and expanding FPL's business;
 - (3) signed a document in what was purported to be his capacity as a director/authorised signatory of FPL;
 - (4) discussed compliance issues with FPL's compliance consultant, including in relation to the advice provided to customers. He also informed the compliance consultant that it could report back to either him or Mr Page;
 - (5) sat on FPL's three-member investment committee, which Mr Page explained in interview made decisions on *'everything really about what we were trying to do'*;
 - (6) contacted and negotiated with third party financial advisers in an effort to expand the business; and
 - (7) attended important meetings with Mr Page and led a number of them on FPL's behalf.

4.18. There is little contemporaneous evidence of Mr Ward seeking or receiving instructions from Mr Page. In fact, Mr Page did not comment on or raise objections to any actions that Mr Ward took, or directed that third parties take, during the Relevant Period. The Authority considers that, during the Relevant Period, Mr Ward exerted a level of influence and control over Mr Page and FPL that could only have been exerted by a director. In particular, Mr Ward:

- (1) frequently instructed Mr Page to carry out tasks and on occasion told him not to do things that Mr Page was planning to do – such as sending a pension valuation to a customer;
- (2) drafted correspondence to FPL’s compliance consultant and directed Mr Page to send it for him;
- (3) instructed Mr Page to ensure that money started to flow into another business with ties to HJL so that FPL did not upset its relationship with HJL; and
- (4) dominated the conversation during meetings between Mr Ward, Mr Page and the Authority.

4.19. Mr Ward’s role was also reflected in the way he was remunerated. In particular, he was remunerated on a similar basis to Mr Page in that:

- (1) after paying the Service Providers for their role in the Pension Review and Advice Process, 50% of the fees retained by FPL were paid to Mr Ward. The remaining 50% were paid to Mr Page, after a deduction to meet FPL’s running costs;
- (2) FPL received a loan of £25,000 which was shared equally between Mr Page and Mr Ward with the intention that the loan would be repaid by commissions generated by FPL; and
- (3) Mr Page and Mr Ward considered buying identical luxury company cars that would be funded by FPL. However, it was not financially viable for FPL to do so for tax purposes due to the size and cost of the car proposed by Mr Page and Mr Ward.

4.20. In addition to Mr Ward’s remuneration, a purported agreement between FPL and Mr Ward for the transfer of FPL’s clients to Mr Ward further suggests that Mr Ward’s status at the firm was not that of a secretary, administrator or junior clerk. The copy of the agreement seen by the Authority is in draft. It is dated 14

January 2015 and is unsigned, but Mr Page subsequently indicated that both he and Mr Ward considered it to be binding. The agreement states that in the event of a cessation of FPL's business, including if FPL entered administration, Mr Ward would have "custodianship" of all FPL customers with fund values in their SIPPs over £50,000 and that Mr Ward could introduce those customers to an alternative financial adviser.

Mr Ward's knowledge/awareness that he was undertaking a controlled function which required him to be approved

- 4.21. Mr Ward has over 30 years' experience of working in the financial services sector in the UK. This experience includes working as an approved person for nearly nine years, performing management or director roles at three regulated firms, including a role with responsibilities for compliance. He also worked at the SFA, supervising regulated firms, and confirmed to the Authority in interview that he understands what controlled functions are and the need for approval when performing them.
- 4.22. For the reasons described in paragraphs 4.15 to 4.20 above, the Authority considers that Mr Ward performed the role of a director in relation to FPL's business. Mr Ward was aware that Mr Page was the principal of FPL and that he could not be seen by the Authority to make decisions or control activities. In certain respects, Mr Ward was careful to influence matters behind the scenes, as is apparent from his involvement in FPL's communications with the Authority (see paragraphs 4.30 to 4.42 below). However, in other aspects of FPL's business he was less guarded and prepared to direct and manage matters more openly, such as his communications and directions to the SIPP Provider on behalf of FPL.
- 4.23. Had FPL applied to the Authority for Mr Ward to be approved to perform the Director Function, there was a material risk that the Authority would not have granted the application given Mr Ward's disciplinary history (described at paragraphs 4.7 to 4.9 above), and in particular given his criminal conviction, which arose from the performance of his role at another financial services firm. The Authority considers that Mr Ward must have been aware of this risk in light of his previous work experience and the letter he received from the Authority on 22 April 2002.
- 4.24. For the above reasons, the Authority considers that during the Relevant Period, Mr Ward knew, or could reasonably be expected to have known, that he was performing the Director Function and that he chose not to seek approval because

he knew he was unlikely to be approved for such a role. In performing the Director Function in such circumstances, Mr Ward acted without integrity.

Lack of regard for customers' interests

- 4.25. Throughout the Relevant Period, Mr Ward disregarded the interests of FPL's customers. He was aware that HJL had initiated and influenced the development of the pension switching advice model (which FPL adopted as the Pension Review and Advice Process) and that the process involved the Service Providers performing the Outsourced Functions without any meaningful involvement or adequate oversight by FPL. He was also aware that HJL had a material financial interest in the Loan Notes, that this was not disclosed to customers, and that the Pension Review and Advice Process was structured to result in customers being advised to switch their pensions to SIPPs investing in the Underlying Investments. However, he closed his mind to the obvious conflict of interest presented by HJL's key role in the Pension Review and Advice Process and its financial interest in the Loan Notes, and to the risk that unsuitable advice might be given to FPL's customers, and was instrumental in FPL's adoption and use of the Pension Review and Advice Process.
- 4.26. Mr Ward had sight of pension alerts issued by the Authority which suggested that the Pension Review and Advice Process was not compliant with the Authority's rules. Rather than use this as an opportunity to review the Pension Review and Advice Process, he deliberately disregarded the alerts and stated to HJL that they were '*meaningless*' for FPL.
- 4.27. Mr Ward took instructions, and sought approval, from HJL for a number of the actions that were then taken by FPL, including in relation to the way in which FPL's customers' pension savings should be invested. By acting in this way, Mr Ward placed the interests of HJL above the interests of FPL's customers. In particular, Mr Ward:
- (1) took instructions from HJL in relation to the novation of customers to FPL from another financial adviser that had adopted the same pension switching advice model;
 - (2) asked HJL to approve his proposal to transfer customers' investments from the Loan Notes to other investments (including the Bond), in a number of which HJL also had a material financial interest; and

(3) gave HJL a say in how FPL's customers' funds should be allocated and demonstrated that he was prepared to follow HJL's instructions.

4.28. Mr Ward played a key role, including reviewing draft communications, in FPL's decision to use an 'opt out' letter to seek customers' consent to transfer the cash in their SIPPs to the Underlying Investments and to reinvest customers' interest payments from the Underlying Investments. FPL used an 'opt-out' letter even though not all of FPL's customers had ongoing servicing arrangements with FPL. FPL has only been able to provide the Authority with a draft of this letter. The draft letter informed customers that they could contact FPL if they required further advice on the course of action proposed by FPL, but that if they were happy with FPL's proposal, they did not need to do anything and FPL would invest their cash/interest accordingly.

4.29. Notwithstanding efforts by FPL to contact customers to check receipt, it was obvious that some customers might not see the 'opt out' letters, or realise that they needed to respond if they did not consent to the course of action proposed by FPL in the letters. However, Mr Ward ignored the interests of customers, in particular the risk that cash and interest in customers' pensions would be invested in the Underlying Investments without customers' consent.

Misleading the Authority

4.30. Mr Ward encouraged Mr Page to mislead the Authority and was involved in the provision of misleading information to the Authority on more than one occasion.

20 August 2014 New Business Register

4.31. The Authority contacted Mr Page by telephone and email on 7 August 2014. In the email, the Authority drew Mr Page's attention to two alerts that had been issued by the Authority relating to pension switches and SIPPs. Mr Page was also asked in the email to provide a detailed new business register setting out "all business" the firm had arranged via a SIPP, including confirmation of whether advice had been provided. Mr Page forwarded the email to Mr Ward five minutes after receiving it.

4.32. On 18 August 2014, Mr Page emailed Mr Ward a list of 15 customers to whom advice had been given in FPL's name under the Pension Review and Advice Process and in respect of whom the application to switch/transfer had been received by the SIPP Provider. Despite this, on 19 August 2014, Mr Ward drafted a new business register, for provision to the Authority, which contained only six

entries in total (along with some details of ongoing advice given to a seventh customer). None of the entries on the draft new business register related to advice given to customers under the Pension Review and Advice Process. Instead they related only to advice which had been provided by Mr Page between September 2012 and March 2014 (before FPL was directly authorised by the Authority).

- 4.33. It was clear from the Authority's correspondence with Mr Page, including the email containing its request for information and links to the two alerts (which was forwarded to Mr Ward), that the Authority was interested in FPL's advice in relation to SIPPs. However, the Authority considers that Mr Ward deliberately omitted relevant information from the draft new business register in an attempt to mislead the Authority about the type of business the firm was conducting, and in particular to prevent the Authority from finding out that customers were being advised to switch their pensions to SIPPs investing in the Loan Notes. Mr Page, after making minor amendments to the six entries and removing the information relating to the seventh customer, provided the Authority with the new business register on 20 August 2014.

1 September 2014 Telephone Call

- 4.34. Mr Ward instructed Mr Page not to tell the Authority that one of the companies providing leads to HJL was apparently cold calling prospective customers.
- 4.35. On 1 September 2014 the Authority called Mr Page to discuss information that the Authority had received which suggested that customers were being cold called on behalf of FPL.
- 4.36. During the course of his call with the Authority, Mr Page emailed Mr Ward to ask about a lead generation company mentioned by the Authority. Mr Ward sent several emails in reply confirming that the lead generation company provided leads to HJL. Mr Ward's emails included the following:
- (1) *"Don't know [the lead generation company]. Checking now but I would say no!"*
 - (2) *"They are a lead provider and provide leads to [HJL]. Not direct to us – so don't use this info yet!!!! I am still digging!!!!"*
 - (3) *"WE have not – our introducer may have – again im [sic] still digging so don't open to them yet!!!!"*

- (4) *"This is ok I believe. As its [sic] not us so we can deflect the flak!!!! If Needed!!!! But its [sic] not life threatening issue I don't think mate!!!! Are they being bastards or ok?"*
- (5) *"...[the lead generation company] DO COLD CALL Clients/prospects apparently."*
- (6) *"We can say that we will check with our introducer [HJL] to see if they use this company and if they do we will investigate further and if we do not receive an acceptable reply we will drop them immediately."*
- (7) *"But try and work it that [HJL] use a large number of lead providers and we don't always have details of all of them! DONT [sic] SAY THAT THEY COLD CALL MATE."*

4.37. In sending these emails, Mr Ward deliberately sought to influence the provision of information by FPL to the Authority. He did so by instructing Mr Page to withhold the fact that a firm generating leads on behalf of FPL had apparently been cold calling customers. The Authority considers that, given his experience in financial services, Mr Ward must have known that the Authority would have expected to be told this information, especially in the context of a call from the Authority about a particular lead generation company.

4.38. Mr Page confirmed to the Authority during the telephone call that the lead generation company did introduce customers to HJL, but he did not tell the Authority, either during the call or afterwards, that it apparently cold called. Further, the Authority has not been provided with any evidence to suggest that Mr Ward or Mr Page took any steps to confirm whether the lead generation company mentioned by the Authority did actually cold call or to ensure that it did not do so.

5 September 2014 email

4.39. On 3 September 2014, the Authority emailed Mr Page a link to an alert issued by the Authority that advised customers to ignore any cold calls from firms offering a free pension review. The alert warned that these reviews are typically used to persuade customers to move their pensions into SIPPs invested in unregulated investments. On the same day, the Authority sent Mr Page an email containing links to the two alerts that it had drawn to his attention on 7 August 2014. Mr Page forwarded both of these emails to Mr Ward.

4.40. On 4 September 2014, Mr Ward prepared a draft email for Mr Page to send to the Authority. Mr Ward's draft email commented on the three alerts that the Authority had drawn to Mr Page's attention. As Mr Ward knew, the draft email contained misleading information about the business model FPL had adopted (i.e. the Pension Review and Advice Process). Mr Page then sent the email to the Authority on 5 September 2014, having made only minor and cosmetic amendments to Mr Ward's draft.

4.41. The email was misleading as it:

- (1) stated that FPL did not use lead generation companies as part of its business model and, despite the alert drawn to Mr Page's attention on 3 September 2014 which specifically mentioned cold calling concerns, failed to mention that one of HJL's lead generators apparently used cold calling;
- (2) stated that FPL did not use the services of unauthorised firms when Mr Ward knew that HJL was not authorised, at the time was not an IAR of FPL, and played an important role in the Pension Review and Advice Process;
- (3) stated that FPL did not consider investments in unregulated products such as overseas property, forestry or store pods. While FPL did not consider the suitability of investing in these products directly, Mr Ward knew that the Pension Review and Advice Process was structured to result in customers being advised to switch their pensions to SIPPs investing in the Loan Notes, which were issued by a company in Mauritius, and that the Loan Notes were not regulated by the Authority; and
- (4) gave the impression that Mr Page reviewed customers' circumstances before issuing initial pension review reports and that FPL followed this up with a telephone call to establish whether a customer would like to proceed, when in fact these functions at that time were performed by HJL with little oversight from Mr Page.

4.42. As a result of the information provided to the Authority, in August and September 2014 the Authority considered FPL to be a 'low risk' firm and FPL was not scheduled for further contact for a number of months. If the information provided to the Authority had been accurate and not misleading, the Authority would have asked for further information about FPL's pension advice process and the Loan Notes, and would have intervened at an earlier time.

5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

Performance of a controlled function without approval

5.2. On the basis of the facts and matters described above, the Authority considers that during the Relevant Period Mr Ward knowingly performed, or had such knowledge and experience that he could reasonably be expected to have known that he was performing, the Director Function without approval.

5.3. The Authority considers that Mr Ward was a de facto director of FPL as he:

- (1) was central to FPL's adoption and use of the Pension Review and Advice Process;
- (2) influenced the actions of Mr Page. He directed Mr Page to carry out tasks or refrain from performing certain actions. Mr Page followed these directions. Conversely, Mr Page rarely provided Mr Ward with instructions or commented on his work and did not raise objections to actions taken by Mr Ward (whether directly or through third parties);
- (3) acted with a degree of autonomy that could only be attributed to a director, and he and Mr Page kept one another updated;
- (4) managed and controlled FPL's professional relationships with key third parties, including HJL and the SIPP Provider. In particular, Mr Ward personally instructed the SIPP Provider to transfer customer funds into the Bond and acted as the FPL representative through whom both HJL and the SIPP Provider communicated with FPL;
- (5) took responsibility for key initiatives, including leading negotiations to expand FPL's business, with little or no involvement from Mr Page. He instructed third parties to act on his instructions and signed a document purportedly in his capacity as a director/authorised signatory;
- (6) performed a number of important functions for FPL, including making payments from its bank account;
- (7) was remunerated on a similar basis to Mr Page, who referred to Mr Ward as his business partner; and

- (8) took steps to control and influence the content and flow of information to the Authority on a number of occasions.

5.4. The Authority considers that Mr Ward knew, or could reasonably be expected to have known, that he was performing a role which required approval, given his experience and understanding of the Authority's requirements, and that he chose not to seek approval from the Authority for such a role. In particular, Mr Ward:

- (1) was an approved person for nearly nine years, performing management or director roles at three regulated firms, including a role in compliance;
- (2) worked for the SFA, during which time he supervised regulated firms;
- (3) confirmed to the Authority in interview that he understands what controlled functions are and the need for approval when performing them;
- (4) was aware that the SFA had initiated proceedings to expel him from its register and that the Authority had considered prohibiting him from performing functions in relation to any regulated activity; and
- (5) was aware that, if FPL applied for approval for him to perform a controlled function, the Authority would take into account his disciplinary history and criminal record, and that there was therefore a material risk that the application would not be successful.

Lack of fitness and propriety

5.5. The Authority considers that Mr Ward demonstrated a lack of integrity during the Relevant Period and that, as a result, he is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. In particular, Mr Ward:

- (1) knowingly performed, or had such knowledge and experience that he could reasonably be expected to have known that he was performing, the Director Function without approval, and chose not to seek such approval from the Authority, as referred to above;
- (2) recklessly closed his mind to the obvious conflict of interest presented by HJL's key role in the Pension Review and Advice Process and its significant financial interest in the Loan Notes, and to the risk that unsuitable advice might be given to FPL's customers, and was instrumental in FPL's adoption and use of the Pension Review and Advice Process;

- (3) disregarded the interests of FPL's customers and showed a willingness to enrich FPL, himself and third parties at their expense;
- (4) placed the interests of HJL above the interests of FPL's customers. He took instructions from HJL, and in practice regularly requested approval from HJL, for his actions during the Relevant Period, including in relation to aspects of FPL's business over which HJL should not have had influence (for example, in relation to where and in what proportions FPL's customers' pensions should be invested); and
- (5) took deliberate steps to control and influence the content and flow of information that FPL disclosed to the Authority. Mr Ward encouraged Mr Page to withhold important information from the Authority and deliberately drafted communications, and instructed Mr Page to provide communications to the Authority, that were false and/or misleading.

6. SANCTION

Financial Penalty

- 6.1. The Authority considers it is appropriate to impose a penalty on Mr Ward under section 63A(1) of the Act in respect of the fact that he knowingly performed, or could reasonably be expected to have known that he was performing, a controlled function without approval.
- 6.2. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step penalty framework that applies in respect of financial penalties imposed upon individuals in non-market abuse cases.

Step 1: disgorgement

- 6.3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.4. Mr Ward derived direct financial benefit from the advice fees and ongoing servicing fees generated from customers who switched their pensions to SIPPs investing in the Underlying Investments. The amount received by Mr Ward during the Relevant Period totalled £214,878. In addition, Mr Ward received £33,225

after the Relevant Period which the Authority considers is directly attributable to Mr Ward's misconduct during the Relevant Period.

6.5. The Authority has charged interest on Mr Ward's benefit at 8% per year from receipt to the date of this Notice, amounting to £69,254.

6.6. Step 1 is therefore £317,358.

Step 2: the seriousness of the breach

6.7. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

6.8. The period of Mr Ward's breach was from 3 July 2014 to 1 February 2016. The Authority considers Mr Ward's relevant income for this period to be £214,878. As noted above, Mr Ward received £33,225 after the Relevant Period which the Authority considers is directly attributable to Mr Ward's misconduct during the Relevant Period. Therefore, the Authority considers Mr Ward's relevant income is £248,103.

6.9. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.10. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant:

Nature of the breach

- 6.11. The Authority considers that throughout the Relevant Period Mr Ward failed to act with integrity (DEPP 6.5B.2G(9)(e)).
- 6.12. Had Mr Ward been approved the Authority could have taken action against him pursuant to section 66 of the Act. Mr Ward's conduct during the Relevant Period fell below the standards expected of persons performing controlled functions in relation to regulated activities. For the reasons set out in paragraph 5.5, Mr Ward demonstrated a lack of integrity in performing his role at FPL. Accordingly, had Mr Ward been approved to perform the Director Function, the Authority could have imposed a penalty on him for breaching Statement of Principle 1 of the Statements of Principle for Approved Persons: *An approved person must act with integrity in carrying out his accountable functions.* (DEPP 6.5B.2G(9)(q)).
- 6.13. Mr Ward is an experienced industry professional with over 30 years' experience working in financial services and was previously a director and an approved person, and therefore could reasonably be expected to have known that he was performing a controlled function without approval (DEPP 6.5B.2G(9)(r)(i) and (iii)).

Deliberate misconduct

- 6.14. Mr Ward knew, or had such knowledge and experience that he could reasonably be expected to have known, that he was performing a controlled function without approval, and chose not to seek such approval from the Authority (DEPP 6.5B.2G(10)(a)).

Level of seriousness

- 6.15. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) Mr Ward's conduct whilst performing the Director Function without approval caused a significant risk of loss to individual customers (DEPP 6.5B.2(12)(a));
 - (2) Mr Ward failed to act with integrity (DEPP 6.5B.2(11)(d)); and
 - (3) Mr Ward's misconduct was committed deliberately (DEPP 6.5B.2(12)(g)). Mr Ward knew, or could reasonably be expected to have known, that he was performing a role for which he required approval but chose not to seek

such approval from the Authority because he knew he was unlikely to receive it.

6.16. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £248,103.

6.17. Step 2 is therefore £99,241.

Step 3: mitigating and aggravating factors

6.18. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.19. The Authority considers that there are no factors that aggravate or mitigate the breach.

6.20. Step 3 is therefore £99,241.

Step 4: adjustment for deterrence

6.21. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.22. The Authority considers that the Step 3 figure of £99,241 represents a sufficient deterrent, and so has not increased the penalty at Step 4.

6.23. Step 4 is therefore £99,241.

Step 5: settlement discount

6.24. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.25. No settlement discount applies.

6.26. The Step 5 figure is therefore £99,200 (rounded down to the nearest £100).

Penalty

- 6.27. The Authority therefore has decided to impose a total financial penalty of £416,558 (including the Step 1 disgorgement figure of £317,358) on Mr Ward in respect of the fact that he knowingly performed, or could reasonably be expected to have known that he was performing, a controlled function without approval.

Prohibition

- 6.28. The Authority has had regard to the guidance in Chapter 9 of EG (the relevant provisions of which are set out in Annex A to this Notice).
- 6.29. For the reasons set out in paragraph 5.5 of this Notice, the Authority considers that Mr Ward's conduct during the Relevant Period demonstrates a lack of integrity and that he is not a fit and proper person.
- 6.30. The Authority therefore considers it is appropriate and proportionate in all the circumstances to prohibit Mr Ward from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Ward, and by HJL as a person given third party rights in respect of the Warning Notice under section 393 of the Act, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Ward and HJL, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. This Notice is given under section 57 and section 63B of the Act and in accordance with section 388 of the Act.

Decision maker

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

The Tribunal

- 8.3. Mr Ward has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper

Tribunal) Rules 2008, Mr Ward has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk).

- 8.4. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 8.5. A copy of Form FTC3 must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy should be sent to Helen Tibbetts at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.6. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

Access to evidence

- 8.7. Section 394 of the Act applies to this Notice.
- 8.8. The person to whom this Notice is given has the right to access:
- (1) the material upon which the Authority has relied in deciding to give this Notice; and
 - (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights

- 8.9. A copy of this Notice is being given to each of Andrew Page, FPL, HJL and CAL as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Each of those parties has similar rights to those mentioned in paragraphs 8.3 and 8.8 above, in relation to the matters which identify him/it.

Confidentiality and publicity

- 8.10. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.11. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. The persons to whom this Notice is given or copied should therefore be aware that the facts and matters contained in this Notice may be made public.

Authority contacts

- 8.12. For more information concerning this matter generally, contact Helen Tibbetts (direct line: 020 7066 0656) at the Authority.

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's objectives are set out in Part 1A of the Act, and include the operational objective of securing an appropriate degree of protection for consumers (section 1C).
- 1.2. Section 56(1) of the Act provides that the Authority may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by (a) an authorised person, (b) a person who is an exempt person in relation to that activity, or (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.
- 1.3. Section 56(2) of the Act provides that a 'prohibition order' is an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function. Section 56(3)(a) provides that a prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 1.4. Section 63A of the Act provides that if the Authority is satisfied that a person ("P") has at any time performed a controlled function without approval and at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval, it may impose a penalty on P of such amount as it considers appropriate. For the purposes of this section P performs a controlled function without approval at any time if at that time P performs a controlled function under an arrangement entered into by an authorised person ("A"), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and the performance by P of the function was not approved under section 59.

2. RELEVANT REGULATORY PROVISIONS

Supervision manual

- 2.1. SUP sets out the relationship between the Authority and authorised persons, and includes in SUP 10A rules and guidance in respect of the Director Function.
- 2.2. SUP 10A.6.7R provides that, in respect of a firm that is a body corporate (other than a limited liability partnership), the Director Function is the function of acting as a director (other than a non-executive director) of that firm.

The Handbook's Glossary

- 2.3. For the purposes of SUP 10A, a "director" is defined in the Handbook's Glossary as, in relation to (among other things) a body corporate:
- (1) Any person appointed to direct its affairs, including a person who is a member of its governing body; and
 - (2) In accordance with section 417(1) of the Act:
 - (a) A person occupying in relation to it the position of a director (by whatever name called); and
 - (b) A person in accordance with whose directions or instructions (not being given in a professional capacity) the directors of that body are accustomed to act.

Enforcement Guide

- 2.4. EG sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 2.5. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose financial penalties and other disciplinary sanctions.

Decision Procedure and Penalties manual

- 2.6. The Authority's policy for imposing penalties is set out in Chapter 6 of DEPP.

ANNEX B

REPRESENTATIONS

Representations received from Mr Ward

1. Mr Ward's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

Medical condition

2. *Mr Ward has had a medical condition since the start of the Authority's investigation which has hindered his ability fully to make representations on the Warning Notice. He disagrees with the entire content of the Warning Notice and would have provided more detailed representations if he was in better health.*
3. The Authority has had regard to Mr Ward's submission that he has a medical condition that has affected his ability fully to make representations. The Authority notes that, notwithstanding this submission, Mr Ward has been able to make representations, which the Authority has duly taken into account. Further, the Authority gave Mr Ward the opportunity to make further written representations, but he has not done so. In all the circumstances, the Authority considers that Mr Ward has been given a fair opportunity to make representations on the Warning Notice.

Limitation

4. *The Authority knew of Mr Ward's alleged misconduct more than three years before it gave him the Warning Notice. Therefore, in accordance with section 63A(3) of the Act, the Authority is time-barred from imposing a financial penalty.*
5. *The limitation period started to run in August 2014, when Mr Page discussed matters connected with the Pension Review and Advice Process with the Authority.*
6. The Act was amended by the Financial Services (Banking Reform) Act 2013 so that, for misconduct occurring after 25 July 2014, a six-year limitation period applies. Therefore, the three-year limitation period only applies to that part of Mr Ward's misconduct which occurred prior to 25 July 2014 (i.e. the misconduct occurring between 3 July 2014 and 25 July 2014).
7. In any event, the Authority does not accept that it either knew of Mr Ward's misconduct, or had information from which the misconduct could reasonably be inferred, in August 2014 such that the limitation period would start to run from that

date. The Authority's discussions with Mr Page around that time concerned the matters described at paragraphs 4.30 to 4.42 of this Notice. The Authority was not aware from these communications that FPL had adopted and was using the Pension Review and Advice Process. Further, the misconduct in question is Mr Ward's performance of the Director Function without approval, and at no point did Mr Page refer to Mr Ward's involvement in FPL's business in his discussions with the Authority. Therefore, the Authority had no information at that time indicating that Mr Ward was performing the Director Function, and so the limitation period did not start to run then. Instead, it started to run on 3 June 2015, which was when the Authority visited FPL and became aware of the extent of Mr Ward's role at FPL.

Mr Ward's performance of the Director Function

8. *Mr Ward denies that he performed the role of a director of FPL. He performed a number of administrative tasks whilst working at FPL, always under instruction from Mr Page. Mr Page has confirmed to the Authority on a number of occasions that Mr Ward only ever acted on his instruction and never gave, or intended to give, the impression that Mr Ward was a director of FPL.*
9. *Mr Ward denies that he acted with autonomy. He kept Mr Page updated with all matters he was asked to deal with. Mr Page sat next to Mr Ward in the office, listened to everything that was going on and gave verbal instruction constantly. He checked Mr Ward's work and commented when necessary regularly during the day. He did not need to raise concerns over Mr Ward's actions as these were always carried out following his instructions.*
10. *The fact that Mr Ward was a representative of FPL does not mean he was capable of making decisions. In all companies, employees and consultants converse on behalf of the company.*
11. *Mr Ward denies that he controlled anything within FPL's business or its third party relationships. Mr Ward instructed third parties in accordance with Mr Page's instructions, which he mostly gave whilst sitting next to Mr Ward in the office.*
12. *The document Mr Ward signed was a non-disclosure agreement with a pension trustee that Mr Page and he personally were investigating the possibility of purchasing. He did not sign as a director or authorised signatory of FPL but in his own right as a potential purchaser.*
13. *The Authority is merely assuming that, because Mr Page once referred to Mr Ward as his business partner, Mr Ward must have played a bigger role within FPL. Mr Ward's*

remuneration on a similar basis to Mr Page was transparent and was only for a 12-month period, which was then to be renegotiated with Mr Page. Further, remuneration is not a sign of control of a company. Many companies have staff who exert no control but are paid large salaries and benefits.

14. For the reasons given in paragraph 2.5 of this Notice, which are based on the facts described in paragraphs 4.10 to 4.20 of this Notice, the Authority considers that Mr Ward did perform the role of a director at FPL during the Relevant Period.
15. The Authority does not agree that Mr Ward merely performed administrative tasks under Mr Page's instruction. The matters described at paragraphs 4.16 and 4.17 of this Notice indicate that he performed far more important functions than mere administrative tasks, and there is little contemporaneous evidence of Mr Page giving him instructions, either in writing or verbally, until after the Authority visited FPL in June 2015. The Authority has also not identified any evidence of Mr Ward receiving instructions from Mr Page in relation to third parties.
16. In contrast, the Authority has identified numerous occasions where Mr Ward gave written instructions to Mr Page, including those summarised in paragraph 4.18 of this Notice. The Authority also notes that Mr Page and Mr Ward worked from separate offices for most of the week, and so disagrees with Mr Ward's submission that Mr Page would have given verbal instructions and listened to what Mr Ward was doing because they were sitting next to each other.
17. In respect of Mr Ward's submission that the fact that he was a representative of FPL did not mean he was capable of making decisions, the Authority considers that the matters described at paragraphs 4.16 and 4.17 of this Notice demonstrate that Mr Ward was responsible for a number of important functions at FPL.
18. The Authority notes that the non-disclosure agreement was produced in FPL's name and that both Mr Ward and Mr Page signed it as 'director/authorised signatory' of FPL. The agreement was addressed to FPL only, the signature block stated 'Agreed on behalf of Page Wealth', a trading name of FPL, and there was no mention of Mr Page or Mr Ward as individuals. The Authority therefore considers that the evidence supports its view that Mr Ward signed the non-disclosure agreement as a director/authorised signatory of FPL.
19. The Authority considers that, overall, Mr Page's interview evidence indicates he considered Mr Ward to be his business partner or a fellow director at FPL, and that this is supported by the fact that he referred to Mr Ward as his business partner in interview.

20. The Authority considers that Mr Ward was remunerated on a similar basis to Mr Page throughout the operation of the Pension Review and Advice Process, not just for 12 months. The Authority considers that how Mr Ward was paid reflects the senior role that Mr Ward played in FPL's business.

Mr Ward's involvement in the Pension Review and Advice Process

21. *Mr Ward confirms he introduced HJL to Mr Page, but denies that he was responsible for FPL's adoption and use of the Pension Review and Advice Process. He did not have, and did not need to have, a detailed understanding of the process and merely ensured that it ran smoothly following Mr Page's decision to adopt it.*

22. *After he introduced HJL to Mr Page, Mr Page rejected HJL's initial business proposition. Sometime later HJL approached Mr Page again, with a different business proposition. Mr Page then played a fundamental role in the development of the process with a number of third parties.*

23. *The pension switching advice model adopted by FPL was designed either by a law firm that acted for HJL or by another third party service provider and Mr Page was involved in designing the Suitability Reports used in the Pension Review and Advice Process. Advice was given through a robo-advice model signed off by Mr Page, using the Software, and it did not matter who operated that system.*

24. *Mr Ward denies that he disregarded the interests of FPL's customers and showed a willingness to enrich himself, FPL and third parties at customers' expense. He also had no influence over the investment of FPL's customers' pensions at any time, and his interactions with HJL were standard interactions with a product provider.*

25. *At the start of the Authority's investigation, all of FPL's customers had received market beating returns and lower fees as they were advised by Mr Page. The fees charged by FPL for the services it provided under the Pension Review and Advice Process were its standard fees.*

26. The Authority considers that Mr Ward was closely involved in FPL's adoption of the Pension Review and Advice Process, and that this is evident from the description of his actions leading up to FPL's adoption of the process at paragraphs 4.10 to 4.13 of this Notice. The Authority also considers that Mr Ward had a good understanding of the Pension Review and Advice Process as he reviewed the documentation used in the process before it was adopted by FPL and provided an explanation of how it operated in interview with the Authority.

27. Mr Page's first meeting with HJL was in early December 2013 and on 6 December 2013 Mr Page signed an IAR agreement with HJL, for HJL to provide introductions to FPL. The Authority considers this action to be contrary to Mr Ward's assertion that Mr Page rejected HJL's initial business proposal. After signing that contract, Mr Page and Mr Ward made preparations for FPL to conduct business with HJL, with Mr Ward managing the relationship with HJL. The Authority also considers that Mr Page had limited involvement in the development of the pension switching advice model as another IFA firm had already adopted it by the time Mr Ward mentioned the model to Mr Page in March 2014.
28. Mr Ward has not provided any evidence to support his assertion that the pension switching advice model was designed by the law firm that acted for HJL, and the evidence seen by the Authority suggests the law firm did not design the model but instead just provided advice on particular issues relating to it. The Authority acknowledges that individuals at another third party service provider were involved in developing the pension switching advice model, but considers that HJL initiated, and were also involved in, the development of the model. The Authority also acknowledges that Mr Page reviewed and approved a template of the Suitability Reports used in the Pension Review and Advice Process. However, as explained in the below paragraph, this was not sufficient to ensure that the process was compliant.
29. The Authority considers that, where certain aspects of an advice process are automated, it is still necessary for the authorised person to provide adequate oversight and have appropriate controls in place to ensure that the advice provided is suitable, and that the set parameters are being applied in practice and are sufficient to ensure that customers receive appropriate and personalised advice. The Pension Review and Advice Process involved the use of an automated client management system, yet there was a lack of adequate oversight by FPL of the Service Providers' performance of the Outsourced Functions. Further, a key feature of robo-advice models is that they are clear on the face of them that a level of automation is being used so the customer is reasonably able to understand the nature and risks of the service being offered and take investment decisions on an informed basis. However, there was no such disclosure in this case and, in fact, the impression given was the reverse.
30. The matters described at paragraphs 4.25 to 4.29 of this Notice support the Authority's view that Mr Ward disregarded the interests of FPL's customers and placed HJL's interests above theirs. The Authority considers that the evidence shows that Mr Ward was involved in the decision-making in respect of FPL's customers'

investments. For example, he was a member of FPL's investment committee, had discussions with HJL regarding customers' investments and was involved in the proposed transfer of customers' investments from the Loan Notes to other investments (including the Bond). The Authority also does not consider that his interactions with HJL were standard interactions with a product provider, as Mr Ward took instructions from HJL and asked HJL to approve FPL's proposal in respect of customers' investments.

31. The Authority does not dispute that FPL charged the same fees to all its customers. In respect of Mr Ward's submission regarding the performance of the Underlying Investments, the Authority notes that, as at 17 May 2018, the FSCS had paid over £1.7 million in compensation to FPL customers as a result of loss suffered upon switching or transferring their pensions to SIPPs investing in the Underlying Investments. Further, even if the Underlying Investments performed well, this would not negate the Authority's conclusions regarding the failings of the Pension Review and Advice Process and the suitability of the advice given.

Mr Ward's knowledge that he was performing the Director Function

32. *Mr Ward denies that he did not apply for approval to perform a controlled function because it was unlikely that the Authority would grant the application. It is an assumption that the Authority was unlikely to grant the application, which is not justified as an application was never made. FPL did not apply for approval for him as he was not performing the role of a director.*
33. The Authority considers there was a material risk that it would not have granted an application for Mr Ward's approval because of Mr Ward's disciplinary history and, in particular, the nature of his criminal conviction which, as it involved a dishonesty offence, indicates he may not be fit and proper. Further, the Authority considers that Mr Ward would have been aware of this given that the Authority wrote to him in 2002 to inform him that, in the event that an application was made for his approval to carry out any activity, these matters would be considered and taken into account.
34. In addition, the Authority considers that, given Mr Ward's professional experience, disciplinary history and knowledge of controlled functions, Mr Ward knew, or could reasonably have been expected to have known, that he was performing a controlled function.

Misleading the Authority

35. *Mr Ward denies that he took deliberate steps to control and influence the content and flow of information that FPL disclosed to the Authority.*

36. The Authority considers that Mr Ward did take deliberate steps to control and influence the information disclosed by FPL to the Authority on the basis of the facts and matters described in paragraphs 4.30 to 4.42 of this Notice.

Prohibition order

37. *Mr Ward did not commit any misconduct and so contests the proposed prohibition order.*

38. For the reasons set out in paragraph 5.5 of this Notice, the Authority considers that Mr Ward's conduct during the Relevant Period demonstrates a lack of integrity and that he is not a fit and proper person and that a prohibition order is therefore justified.

Representations received from HJL

39. HJL's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

The development of the Software and the pension switching advice model

40. *HJL did not develop the Software or the pension switching advice model. They were instead designed by two individuals at another company independent of HJL ("Company A").*

41. The Authority accepts that HJL did not create the Software, and that it was instead created by two individuals at Company A. However, the Software was developed at the request of HJL. HJL initially sought an efficient way to provide customers with a pension comparison, to see whether the customer's existing pension charges were reasonable. A system was developed by Company A in around 2011/2012 in line with this request. This system was an early version of the Software.

42. In 2013, HJL asked Company A whether an advice model could be "bolted on". HJL staff assisted Company A to understand the products that would be recommended through the Software so that Company A could develop the triggers for the advice. HJL also led the creation of the templates of the documents which were used in the Pension Review and Advice Process and which enabled a complete, fully advised

pension switch. The Authority therefore considers that HJL initiated and influenced the development of both the Software and the pension switching advice model.

HJL did not process leads obtained through unlawful cold calling

43. *HJL was at no time involved in cold calling activities itself. All clients introduced to the Firm were obtained by lead generation businesses through a generic financial promotion process, which did not involve the lead generator in identifying any specific investment or a specific provider of investment services. To the extent the activities of the lead generators involved unsolicited real-time financial promotions, those promotions were exempt from the financial promotion restriction in section 21(1) of the Act by virtue of Article 17 of the Financial Service and Markets Act 2000 (Financial Promotion) Order 2005.*

44. The Authority has not found that HJL unlawfully cold called customers. Instead, the Authority has found that Mr Page did not tell the Authority during the telephone call on 1 September 2015 that FPL had evidence that a lead generation company mentioned by the Authority apparently cold called. Further, the Authority has not been provided with any evidence to suggest that Mr Ward or Mr Page took any steps to confirm whether the lead generation company mentioned by the Authority did actually cold call or to ensure that it did not do so.

Other entities were involved with the use of the Software during the Relevant Period but have not been addressed in the Warning Notice to the same extent as HJL

45. *HJL discharged its limited processing functions for the period July to October 2014. At other times in the Relevant Period these functions were discharged by CAL, however, HJL is named frequently throughout the Notice.*

46. Each of the relevant entities that were involved in the Pension Review and Advice Process are mentioned to the extent necessary to describe the facts and matters relied on in reaching the decision to take the action set out in paragraph 1.1 of the Notice. The fact that HJL is mentioned more often than CAL is partly a reflection of its greater role in the Pension Review and Advice Process, in particular, its role in the development of the model on which the process is based, its lead generation activities, its role in relation to the products recommended through the process, and its financial interest in those products. In addition, the fact that HJL is named frequently throughout the Notice is a reflection of Mr Ward's interactions with the company, which are relevant to the Authority's conclusion that he performed the Director Function at FPL without approval and that, in doing so, he acted without integrity.

Anonymisation of HJL

47. *There is no reason why HJL should not be anonymised. The Notice would achieve what it is intended to achieve even if HJL is not identified by name. HJL's commercial interests will be significantly harmed if it is named in the Notice.*

48. HJL had a central role in the Pension Review and Advice Process. In particular, it initiated and influenced the development of the pension switching advice model, brought the model to the attention of the Firm through Mr Ward, performed the Outsourced Functions and had a material financial interest in the Loan Notes. Further, as mentioned above, Mr Ward's interactions with the company are relevant to the Authority's conclusion that he performed the Director Function at FPL without approval and that, in doing so, he acted without integrity. In these circumstances, the Authority considers it appropriate to mention HJL by name so that its findings, and the factual background (including the key parties involved), can be easily ascertained by the recipient of the Notice, as well as by any other reader of the Notice. In addition, the Authority considers it possible that HJL could be identified from the description of the matters contained in the Notice even if anonymised as the Authority's Financial Services Register names HJL as an IAR of FPL between 11 September 2014 and 2 July 2015, and the Authority considers it is necessary to include detail in the Notice about HJL, including that it was an IAR and the time period that it was registered as an IAR, in order to explain the relationship between HJL and FPL. As such, the Authority considers it unlikely that HJL will be materially prejudiced as a result of being referred to by its name in the Notice.